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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,469	08/01/2001	Henry Houh	EMPIR-018AUS	5568
22468	7590	07/12/2006	EXAMINER	
CHAPIN & HUANG L.L.C. WESTBOROUGH OFFICE PARK 1700 WEST PARK DRIVE WESTBOROUGH, MA 01581			PHAN, THAI Q	
			ART UNIT	PAPER NUMBER
			2128	

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/920,469	<b>Applicant(s)</b> HOUH, HENRY	
	<b>Examiner</b> Thai Phan	<b>Art Unit</b> 2128	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-83 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

This Office action is in response to applicant's Affidavit filed on 05/05/2006. The finality rejection is withdrawn. Claims 1-83 are pending in the action.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-83 are rejected under 35 U.S.C. 102(e) as being anticipated by Lyles et al, US patent no. 6,563,829.

As per claim 1, Lyles anticipates a method and system for emulating a communication network for providing integrated packet services over a shared media network with features very identical to the claimed invention. According to Lyles, the network emulation includes steps:

Receiving, with a network processor programmed to emulate network, an input network flow or packet stream (col. 11, lines 29-40, lines 50-60, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream (col. 10, line 13 to col. 12, line 44, for example).

As per claim 2, Lyles anticipates the modified output characteristics include delay, jitter, packet streams, and other parameters for controlling network quality (cols. 2-4).

As per claims 3-12, Lyles anticipates the network testing for data network including the claimed limitation such as optical network, data stream, VOIP, MOP, etc.

As per claim 13, Lyles anticipates a method and system for emulating a communication network for providing integrated packet services over a shared media network with features very identical to the claimed invention. According to Lyles, the network emulation includes steps:

Receiving, with a network processor programmed to emulate network, an input network flow, flow patterns, or packet stream (col. 11, lines 29-40, lines 50-60, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream, handling output stream according to flow simulation or virtual time (col. 10, line 13 to col. 12, line 44, for example).

As per claims 14-24, Lyles anticipates the claimed limitations for network flow emulation.

As per claim 25, Lyles anticipates a method and system for emulating a communication network for providing integrated packet services over a shared media network with features very identical to the claimed invention. According to Lyles, the network emulation includes steps:

Receiving, with a network processor programmed to emulate network, an input network flow, flow patterns, or packet stream (col. 11, lines 29-40, lines 50-60, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream, changing output flow pattern to the scheduling time (col. 10, line 13 to col. 12, line 44, for example).

As per claims 26-28, Lyles anticipates the claimed limitation for packet flow emulation, data packet emulation, and flow control for network quality and quality services.

As per claim 29, Lyles anticipates a method and system for emulating a communication network for providing integrated packet services over a shared media network with features very identical to the claimed invention. According to Lyles, the network emulation includes steps:

Receiving, with a network processor programmed to emulate network, an input network flow, flow patterns, or packet stream (col. 11, lines 29-40, lines 50-60, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream (col. 10, line 13 to col. 12, line 44, for example).

As per claims 30-40, Lyles anticipates the claimed limitations for virtually simulating or testing data communication networks, wherein the networks include a plurality of characteristics, performances, traffic flow profiles, flow controls, etc.

As per claims 42-55, due to the similarity of claims 42-55 to the above claims, claims 42-55 are also rejected in like manner.

As per claims 56 and 79, Lyles anticipates a method and system for emulating a communication network for providing integrated packet services over a shared media network with features very identical to the claimed invention. According to Lyles, the network emulation includes steps:

Receiving, with a network processor programmed to emulate network, an input network flow, flow patterns, or packet stream (col. 11, lines 29-40, lines 50-60, for example),

Providing, with the network emulation system, an output packet stream wherein the output packet stream comprising a modification of the input stream (col. 10, line 13 to col. 12, line 44, for example).

As per claims 57-67, Lyles anticipates the computer program product implemented in a system for testing and emulating the data network, wherein the data networks include optical networks, Ethernet and others, testing of data flow including data stream, VOIP, MOP, hybrid fiber coaxial cable, etc.

As per claims 68-83, due to the similarity of claims 68-83 to the claims above, claims 68-83 are also rejected in like manner.

***Response to Argument/Amendment***

Applicant's argument in the affidavit has been considered. A new ground of rejection has been made in this Office action.

***Conclusion***


1. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
1. US patent no. 7,009,962, issued to Chung et al, on Mar. 2006
2. US patent no. 7,050,962 B2, issued to Zeidman, Robert, on May 2006
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to examiner Thai Phan whose telephone number is 571-272-3783.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamini Shah can be reached on 571-272-2279. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2128

3. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

July 03, 2006

  
Thai Phan  
Primary Examiner